

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MIGUEL MEDINA,

Plaintiff,

**Civil Action No. 9:16-CV-1284
(TJM/DEP)**

v.

**SGT. SHEEHAN, Albany County
Correctional Facility,**

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, Chief United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Peebles's December 21, 2018 Report and Recommendation [dkt. # 46] have been filed, and the time to do so has expired.

II. DISCUSSION

Ordinarily, when no objections are raised to a report and recommendation, the Court examines the record to determine whether the report and recommendation is subject to attack for plain error or manifest injustice. Here, however, the Court's docket contains an entry indicating that the Report and Recommendation was mailed to Plaintiff at his last

known address in Mechanicville, New York on December 21, 2018, “delivered, left with individual” at an unidentified Mechanicville address on December 24, 2018, returned to the United States Postal Service on January 2, 2019, and now is listed as “in transit to next facility.” Dkt. # 47. It is unclear why the Report and Recommendation is listed as still in transit, whether Plaintiff actually received the Report and Recommendation, or whether Plaintiff failed in his obligation to keep the Court advised of his address so that documents and decisions can be served upon him by mail. See Local Rules of the United States District Court for the Northern District of New York, 10.1(b). The Court notes, however, that Plaintiff failed to respond to the motion for summary judgment, and it may well be that Plaintiff has abandoned this sole remaining claim.

Because of the uncertainty surrounding the service of the Report and Recommendation on Plaintiff, the Court will exercise its discretion and review this matter as if a general objection has been lodged to the Report and Recommendation. Under such circumstances, the Court reviews the record *de novo*. See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The Court may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id.

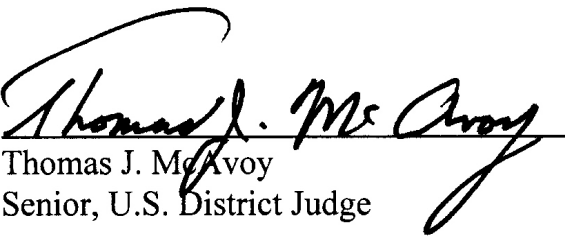
III. CONCLUSION

Having considered the record *de novo*, the Court **ACCEPTS and ADOPTS** the Report and Recommendation [dkt. # 46] for the reasons stated therein. Defendant Sheehan’s motion for summary judgment [Dkt. # 36] is **GRANTED**, and the sole remaining claim in plaintiff's amended complaint (Dkt. # 15) is **DISMISSED**. The Clerk of the Court

may close the file in this matter.

IT IS SO ORDERED.

Dated: February 27, 2019


Thomas J. McAvoy
Senior, U.S. District Judge